

CHAPTER 352D

STATE UNCLASSIFIED EMPLOYEES RETIREMENT PROGRAM

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352D.01 ESTABLISHMENT.

There is hereby established within the Minnesota state retirement system a retirement program for certain public employees to be known as the Minnesota unclassified employees retirement program, which shall be administered by the Minnesota state retirement system.

History: 1971 c 604 s 1; 1973 c 624 s 1; 1986 c 458 s 5

352D.015 DEFINITIONS.

Subdivision 1. As used in this chapter, unless the context or subject matter indicates otherwise, the following terms shall have the meanings given.

Subd. 2. "Unclassified program" means the program established by this chapter.

Subd. 3. "Supplemental fund" means the fund established and governed by section 11A.17.

Subd. 4. "General fund" means the state employees retirement fund except the moneys for the unclassified program.

Subd. 5. **Covered employment.** "Covered employment" means employment covered by this chapter or by chapter 352.

Subd. 6. "Employee shares" means shares in the supplemental fund purchased with the employee's contributions.

Subd. 7. "Employer shares" means shares in the supplemental fund purchased with the employer's contributions.

Subd. 8. "Total shares" means all the employee shares and employer shares credited to a participant. Where applicable, the term "contributions" shall mean "shares."

Subd. 9. "Value" means cash value at the end of the month following receipt of an application. If no application is required, "value" means the cash value at the end of the month in which the event necessitating the transfer occurs.

Subd. 10. [Repealed, 1975 c 368 s 51]

History: 1973 c 624 s 2; 1975 c 368 s 41; 1980 c 607 art 14 s 46; 1983 c 128 s 32; 1986 c 458 s 6; 1987 c 284 art 4 s 4; 1993 c 307 art 1 s 34

352D.02 COVERAGE.

Subdivision 1. **Coverage.** (a) Employees enumerated in paragraph (b), if they are in the unclassified service of the state or metropolitan council and are eligible for coverage under the general state employees retirement plan under chapter 352, are participants in the unclassified program under this chapter unless the employee gives notice to the executive director of the Minnesota state retirement system within one year following the commencement of employment in the unclassified service that the employee desires coverage under the general state employees retirement plan. For the purposes of this chapter, an employee who does not file notice with the executive director is deemed to have exercised the option to participate in the unclassified plan.

(b) Enumerated employees are:

(1) an employee in the office of the governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, or an employee of the state board of investment;

(2) the head of a department, division, or agency created by statute in the unclassified service, an acting department head subsequently appointed to the position, or an employee enumerated in section 15A.081, subdivision 1 or 15A.083, subdivision 4;

(3) a permanent, full-time unclassified employee of the legislature or a commission or agency of the legislature or a temporary legislative employee having shares in the supplemental retirement fund as a result of former employment covered by this chapter, whether or not eligible for coverage under the Minnesota state retirement system;

(4) a person who is employed in a position established under section 43A.08, subdivision 1, clause (3), or in a position authorized under a statute creating or establishing a department or agency of the state, which is at the deputy or assistant head of department or agency or director level;

(5) the regional administrator, or executive director of the metropolitan council, general counsel, division directors, operations managers, and other positions as designated by the council, all of which may not exceed 27 positions at the council and the chair, provided that upon initial designation of all positions provided for in this clause, no further designations or redesignations may be made without approval of the board of directors of the Minnesota state retirement system;

(6) the executive director, associate executive director, and not to exceed nine positions of the higher education services office in the unclassified service, as designated by the higher education services office before January 1, 1992, or subsequently redesignated with the approval of the board of directors of the Minnesota state retirement system, unless the person has elected coverage by the individual retirement account plan under chapter 354B;

(7) the clerk of the appellate courts appointed under article VI, section 2, of the Constitution of the state of Minnesota;

(8) the chief executive officers of correctional facilities operated by the department of corrections and of hospitals and nursing homes operated by the department of human services;

(9) an employee whose principal employment is at the state ceremonial house;

(10) an employee of the Minnesota educational computing corporation;

(11) an employee of the world trade center board; and

(12) an employee of the state lottery board who is covered by the managerial plan established under section 43A.18, subdivision 3.

Subd. 1a. [Repealed, 1995 c 141 art 4 s 31]

Subd. 1b. [Repealed, 1991 c 238 art 1 s 26]

Subd. 1c. An employee covered by the regular plan who is subsequently employed as a permanent, full-time unclassified employee of the legislature or any commission or agency of the legislature may elect to transfer accumulated employee and matching employer contributions, as provided in section 352D.03.

Subd. 1d. Election of program participation. An employee who is a participant in the unclassified program by virtue of employment in a position listed in subdivision 1 may elect to remain in the unclassified program upon subsequent employment in an unlimited, full-time unclassified position that is not listed in subdivision 1. To elect participation in the unclassified program, the employee must give notice to the executive director of the Minnesota state retirement system within one year of the commencement of employment in an unclassified position that is not listed in subdivision 1. Upon receipt of the notice, the executive director shall transfer to the employee's account in the unclassified program an amount equal to the employer and employee contributions with six percent interest to the regular plan on the employee's behalf from the commencement of employment in the position not listed in subdivision 1 to the receipt of the notice by the executive director.

Subd. 2. A person becoming a participant in the unclassified program by virtue of employment in a position specified in subdivision 1, clause (2) and remaining in the unclassified service shall remain a participant in the program even though the position the person occupies is deleted from any of the sections referenced in subdivision 1, clause (2) by subsequent amendment, except that a person shall not be eligible to elect the unclassified program after separation from unclassified service if on the return of the person to service, that position is

not specified in subdivision 1, clause (2). Any person employed in a position specified in subdivision 1 shall cease to participate in the unclassified program in the event the position is placed in the classified service.

Subd. 3. An election to not participate is irrevocable during any period of covered employment. An employee credited with employee shares in the unclassified program, after acquiring credit for ten years of allowable service but prior to termination of covered employment, may, notwithstanding other provisions of this subdivision, elect to terminate participation in the unclassified plan and be covered by the regular plan by filing such election with the executive director. The executive director shall thereupon redeem the employee's total shares and shall credit to the employee's account in the regular plan the amount of contributions that would have been so credited had the employee been covered by the regular plan during the employee's entire covered employment. The balance of money so redeemed and not credited to the employee's account shall be transferred to the state contribution reserve of the state employees retirement fund, except that (1) the employee contribution paid to the unclassified plan must be compared to (2) the employee contributions that would have been paid to the general plan for the comparable period, if the individual had been covered by that plan. If clause (1) is greater than clause (2), the difference must be refunded to the employee as provided in section 352.22. If clause (2) is greater than clause (1), the difference must be paid by the employee within six months of electing general plan coverage or before the effective date of the annuity, whichever is sooner.

Subd. 4. When any person elects participation in the unclassified program all contributions from the time first eligible to make such an election shall be covered by the program.

Subd. 5. An employee in a position with retirement coverage under the basic program in the teachers retirement association is not entitled to participate in the plan unless the employee leaves the position and begins employment more than 30 days later in a position with retirement coverage under the plan.

Subd. 6. The provisions of section 352.04, subdivision 8, apply to this section.

History: 1971 c 604 s 2; 1973 c 624 s 3; 1975 c 368 s 42,43; 1976 c 329 s 11; 1977 c 429 s 17; 1979 c 50 s 43; 1980 c 607 art 14 s 37; 1981 c 224 s 68,69; 1982 c 399 s 1; 1982 c 560 s 56,57; 1983 c 128 s 33; 1983 c 247 s 138; 1984 c 574 s 8; 1984 c 619 s 14; 1984 c 654 art 2 s 124; art 5 s 58; 1Sp1985 c 10 s 88; 1986 c 444; 1986 c 458 s 7; 1990 c 570 art 4 s 1; 1991 c 233 s 109; 1991 c 317 s 1; 1992 c 446 s 3,4; 1993 c 239 art 1 s 1,2; 1993 c 307 art 3 s 6,7; 1994 c 628 art 1 s 3; art 3 s 30; 1995 c 141 art 4 s 2; 1995 c 212 art 3 s 59

352D.03 TRANSFER OF ASSETS.

Unless an eligible employee enumerated in section 352D.02, subdivision 1 or 1a, has elected coverage under the individual retirement account plan under chapter 354B, a sum of money representing the assets credited to each employee exercising the option contained in section 352D.02, plus an equal employer contribution together with interest for the employment period at the actuarially assumed rates during this period, compounded annually, shall be used for the purchase of shares on behalf of each employee in the accounts of the supplemental retirement fund established by section 11A.17. Any employer's contribution to amortize the deficit in the state employee's retirement fund shall not, however, be used for the purchase of shares.

History: 1971 c 604 s 3; 1973 c 35 s 54; 1973 c 624 s 4; 1974 c 152 s 12; 1980 c 607 art 14 s 46; 1992 c 446 s 5

352D.04 INVESTMENT OPTIONS.

Subdivision 1. (a) An employee exercising an option to participate in the retirement program provided by this chapter may elect to purchase shares in one or a combination of the income share account, the growth share account, the international share account, the money market account, the bond market account, the fixed interest account, or the common stock index account established in section 11A.17. The employee may elect to participate in one or more of the investment accounts in the fund by specifying, on a form provided by the executive director, the percentage of the employee's contributions provided in subdivision 2 to be used to purchase shares in each of the accounts.

(b) A participant may indicate in writing on forms provided by the Minnesota state retirement system a choice of options for subsequent purchases of shares. Until a different written indication is made by the participant, the executive director shall purchase shares in the supplemental fund as selected by the participant. If no initial option is chosen, 100 percent income shares must be purchased for a participant. A change in choice of investment option is effective no later than the first pay date first occurring after 30 days following the receipt of the request for a change.

(c) Shares in the fixed interest account attributable to any guaranteed investment contract as of July 1, 1994, may not be withdrawn from the fund or transferred to another account until the guaranteed investment contract has expired, unless the participant qualifies for withdrawal under section 352D.05 or for benefit payments under sections 352D.06 to 352D.075.

(d) A participant or former participant may also change the investment options selected for all or a portion of the participant's shares previously purchased in accounts, subject to the provisions of paragraph (c) concerning the fixed interest account. Changes in investment options for the participant's shares must be effected as soon as cash flow to an account practically permits, but not later than six months after the requested change.

Subd. 2. The moneys used to purchase shares under this section shall be the employee and employer contributions provided in this subdivision.

(a) The employee contribution shall be an amount equal to the employee contribution specified in section 352.04, subdivision 2.

(b) The employer contribution shall be an amount equal to six percent of salary.

These contributions shall be made by deduction from salary in the manner provided in section 352.04, subdivisions 4, 5, and 6.

History: 1971 c 604 s 4; 1973 c 624 s 5; 1974 c 152 s 13; 1980 c 607 art 14 s 38; 1981 c 224 s 70; 3Sp1981 c 2 art 1 s 68; 1983 c 128 s 34; 1986 c 356 s 9; 1986 c 444; 1988 c 453 s 10; 1989 c 319 art 1 s 13; 1992 c 539 s 11; 1993 c 307 art 1 s 35; 1994 c 528 art 1 s 12; 1994 c 604 art 1 s 12

352D.05 WITHDRAWAL OPTIONS.

Subdivision 1. No withdrawal of shares shall be permitted prior to termination of covered employment.

Subd. 2. [Repealed, 1975 c 368 s 51]

Subd. 3. After termination of covered employment or at any time thereafter, a participant is entitled, upon application, to withdraw the cash value of the participant's total shares or leave such shares on deposit with the supplemental retirement fund. Shares not withdrawn remain on deposit with the supplemental retirement fund until the former participant becomes at least 55 years old, and applies for an annuity under section 352D.06, subdivision 1.

Subd. 4. A participant in the unclassified program may repay regular refunds taken pursuant to section 352.22, as provided in section 352.23. A participant in the unclassified program or an employee covered by the general plan who has withdrawn the value of the total shares may repay the refund taken and thereupon restore the service credit, rights and benefits forfeited by paying into the fund the amount refunded plus interest at an annual rate of 8.5 percent compounded annually from the date that the refund was taken until the date that the refund is repaid. If the participant had withdrawn only the employee shares as permitted under prior laws, repayment shall be pro rata. Payment shall be made in a lump sum.

Subd. 5. [Repealed, 1993 c 307 art 7 s 1]

History: 1971 c 604 s 5; 1973 c 624 s 6; 1975 c 368 s 44; 1976 c 81 s 1; 1978 c 562 s 10; 1980 c 607 art 14 s 39,40; 1986 c 444; 1990 c 570 art 12 s 18; 1992 c 598 art 1 s 10; 1993 c 307 art 1 s 36,37; art 2 s 17

352D.06 ANNUITIES.

Subdivision 1. When a participant attains at least age 55, is retired from covered service, and applies for a retirement annuity, the cash value of the participant's shares shall be transferred to the Minnesota postretirement investment fund and used to provide an annuity for

the retired employee based upon the participant's age when the benefit begins to accrue according to the reserve basis used by the state employees retirement fund in determining pensions and reserves.

Subd. 2. A participant has the option in an application for an annuity to apply for and receive the value of one-half of the total shares and thereafter receive an annuity, as provided in subdivision 1, based on the value of one-half of the total shares.

Subd. 3. An annuity herein shall begin to accrue the first day of the first full month after an application is received or after termination of state service, whichever is later.

History: 1971 c 604 s 6; 1973 c 624 s 7; 1975 c 368 s 45,46; 1980 c 607 art 14 s 45 subd 2; 1986 c 444; 1986 c 458 s 8; 1989 c 319 art 1 s 14

352D.065 DISABILITY BENEFITS.

Subdivision 1. [Repealed, 1975 c 368 s 51]

Subd. 2. A participant who becomes totally and permanently disabled has the option even if on leave of absence without pay to receive:

- (1) The value of the participant's total shares;
- (2) The value of one-half of the total shares and an annuity based on the value of one-half of the total shares; or
- (3) An annuity based on the value of the participant's total shares.

Subd. 3. The annuity payable under this section shall begin to accrue the first day of the month following the date of disability and shall be based on the participant's age when the annuity begins to accrue. The shares shall be valued as of the end of the month following authorization of payments.

Subd. 4. The benefits payable under this section shall not be reduced by amounts received or receivable under applicable workers' compensation laws.

Subd. 5. A participant who returns to covered service after receiving benefits under this section shall not be required or allowed to repay such benefits.

History: 1973 c 624 s 8; 1975 c 359 s 23; 1975 c 368 s 47,48; 1986 c 444; 1986 c 458 s 9

352D.07 [Repealed, 1973 c 624 s 13]

352D.075 DEATH BENEFITS.

Subdivision 1. [Repealed, 1975 c 368 s 51]

Subd. 2. If a participant dies leaving a spouse and there is no named beneficiary who survives to receive payment or the spouse is named beneficiary, the spouse may receive:

- (1) The value of the participant's total shares;
- (2) The value of one-half of the total shares and beginning at age 55 or thereafter receive an annuity based on the value of one-half of the total shares, provided that if the spouse dies before receiving any annuity payments the value of said shares shall be paid to the spouse's children in equal shares, but if no such children survive then to the parents of the spouse in equal shares, but if no such children or parents survive, then to the estate of the spouse; or
- (3) Beginning at age 55 or thereafter receive an annuity based on the value of the total shares, provided that if the spouse dies before receiving any annuity payments the value of said shares shall be paid to the spouse's children in equal shares, but if no such children survive then to the parents of the spouse in equal shares, but if no such children or parents survive, then to the estate of the spouse; and further provided, if said spouse dies after receiving annuity payments but before receiving payments equal to the value of the employee shares, the value of the employee shares remaining shall be paid to the spouse's children in equal shares, but if no such children survive then to the parents of the spouse in equal shares, but if no such children or parents survive, then to the estate of the spouse.

Subd. 3. If a participant dies and has named a beneficiary, the value of the total shares shall be paid to such beneficiary, but if such beneficiary dies before receiving payment, or if no beneficiary has been named and there is no spouse, the value of said shares shall be paid to

the children of the participant in equal shares, but if no such children survive then in equal shares to the parents of the participant, but if no such children or parents survive, then to the estate of the participant.

History: 1973 c 624 s 9; 1975 c 368 s 49,50; 1986 c 444; 1989 c 319 art 1 s 15

352D.08 [Repealed, 1973 c 624 s 13]

352D.085 COMBINED SERVICE.

Subdivision 1. Service under the unclassified program for which the employee has been credited with employee shares may be used for the limited purpose of qualifying for benefits under sections 352.115, 352.72, subdivision 1, 352.113, 354.44, 354.45, 354.48, and 354.60; provided such service may not be used to qualify for a disability benefit under section 352.113 or 354.48 if a participant was under the unclassified program at the time of the disability, and provided further that the years of service and salary paid while the participant was in the unclassified program shall not be used in determining the amount of benefits.

Subd. 2. [Repealed, 1975 c 368 s 51]

History: 1973 c 624 s 10; 1986 c 444; 1986 c 458 s 10

352D.09 ADMINISTRATION.

Subdivision 1. **Administrative agency and standards.** The unclassified employees retirement plan and the provisions of this chapter must be administered by the Minnesota state retirement system. The provisions of chapter 352 govern in all instances where not inconsistent with the provisions of this chapter. Fiduciary activities of the unclassified employees retirement plan must be undertaken in a manner consistent with chapter 356A.

Subd. 2. Whenever redemption or purchases from the supplemental retirement fund are required to be made, the executive director shall make them.

Subd. 3. The executive director shall annually distribute the prospectus prepared by the supplemental fund, by July 1 or when received from such fund, whichever is later, to each participant in covered employment.

Subd. 4. Whenever benefits or withdrawals are authorized or required to be paid, payment shall be made only after receipt of an application signed by the person or representative authorized to receive the benefit or withdrawal; such application shall be made only on forms authorized by the executive director.

Subd. 5. If the beneficiary, surviving spouse or estate has not made application for benefits within ten years after the date of death of a participant the value of the shares shall be appropriated to the regular fund and provisions of section 352.12, subdivision 12 shall govern. If a former participant fails to make a claim for benefits within five years after termination of covered service or by age 70, whichever is later, the value of the shares shall be appropriated to the general employees retirement fund and the provisions of section 352.22, subdivision 8, shall apply.

Subd. 5a. If a former participant who contributed less than \$100 in employee contributions cannot be contacted by the system for five or more years, the value of the shares shall be appropriated to the general employees retirement fund, but upon subsequent contact by the former employee the account shall be reinstated to the amount that would have been payable had the money been left in the unclassified plan.

Subd. 6. [Repealed, 1994 c 528 art 1 s 15]

Subd. 7. Up to one-tenth of one percent of salary shall be deducted from the employee contributions and up to one-tenth of one percent of salary from the employer contributions authorized by section 352D.04, subdivision 2, to pay the administrative expenses of the unclassified program.

Subd. 8. **Administrative charge deductions.** Any administrative charges deducted under subdivision 7 that were in excess of the administrative expenses between July 1, 1973, and June 30, 1992, together with any investment gains or losses based on fiscal year balances, must be recovered from the state employees retirement plan and held in the unclassified plan to pay future administrative expenses. Any deductions to pay administrative expenses under

section 11A.17, subdivision 10a, on contributions and investment returns attributable to contributions made before July 1, 1992, must be credited back to the participants in the unclassified plan. Any deductions to pay administrative expenses under section 11A.17, subdivision 10a, that exceed an amount equal to 1/12 of an annual charge equal to one-tenth of one percent of the assets in each account will be credited back to the participants.

History: 1971 c 604 s 9; 1973 c 624 s 11; 1981 c 224 s 71; 3Sp1981 c 2 art 1 s 69; 1989 c 319 art 8 s 15; 1992 c 539 s 12; 1993 c 307 art 1 s 38-40; 1994 c 604 art 1 s 13

352D.10 [Repealed, 1981 c 224 s 276]

352D.11 PURCHASE OF PRIOR SERVICE CREDIT.

Subdivision 1. **Eligibility.** A qualified legislative employee may purchase prior service credit from the Minnesota state retirement system for service for which the employee did not receive service credit from the state retirement system. An employee is qualified to purchase prior service credit only if:

(1) the employee is a permanent employee of the senate, the house of representatives, or of a joint legislative agency or legislative commission, or a former permanent employee of the senate, the house of representatives, or of a joint legislative agency or legislative commission who has not withdrawn the value of shares in the unclassified program; and

(2) before permanent employment the employee served as a temporary, intermittent, or contract employee of the senate, the house of representatives, a joint legislative staff agency, or a legislative commission.

Subd. 2. **Payments by employee.** An employee entitled to purchase service credit may make the purchase by paying to the state retirement system an amount equal to the current employee contribution rate in effect for the state retirement system applied to the current or final salary rate multiplied by the months and days of prior temporary, intermittent, or contract legislative service. Payment shall be made in one lump sum unless the executive director of the state retirement system agrees to accept payment in installments over a period of not more than three years from the date of the agreement. Installment payments shall be charged interest at an annual rate of 8.5 percent compounded annually.

Subd. 3. **Certification.** Proof of all legislative employment and the duration of all legislative employment shall be established for current or former employees by certification of the appropriate employer:

(1) by the committee on rules and administration of the senate;

(2) by the committee on rules and legislative administration of the house of representatives; or

(3) by the agency director or commission chair for service as an employee of a joint legislative staff agency or legislative commission.

Certification to the executive director of the state retirement system shall include the exact period or periods of employment for which the employee or qualified former employee is entitled to obtain service credit. Service credit shall be computed and granted upon receiving payment based on the relationship that the temporary, intermittent, or contract service bears to full-time employment.

Subd. 4. **Employer contributions.** Employee payments to the state retirement system authorized by this section shall be matched by the current employer of the qualified employee from the appropriation made to the respective legislative expense funds or the appropriation available to the agency or commission. If the qualified employee is a participant in the unclassified program at the time of payment, payments by the employee and employer shall be used to purchase shares in the Minnesota supplemental retirement fund.

History: 1983 c 360 s 1; 1986 c 444; 1992 c 598 art 1 s 11

352D.12 TRANSFER OF PRIOR SERVICE CONTRIBUTIONS.

An employee who is a participant in the unclassified program and who has prior service credit in a covered plan under chapters 352, 353, 354, 354A, and 422A may, within the time limits in this section, elect to transfer to the unclassified program accumulated employee and

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equal employer contributions with interest at an annual rate of 8.5 percent compounded annually, based on fiscal year balances.

If a participant has taken a refund from a fund listed in this section, the participant may repay the refund to that fund, notwithstanding any restrictions on repayment to that fund, plus 8.5 percent interest compounded annually and have the accumulated employee and equal employer contributions transferred to the unclassified program with interest at an annual rate of 8.5 percent compounded annually based on fiscal year balances. If a person repays a refund and subsequently elects to have the money transferred to the unclassified program, the repayment amount, including interest, is added to the fiscal year balance in the year which the repayment was made.

A participant electing to transfer prior service contributions under this section must complete the application for the transfer and repay any refund within one year of July 1, 1985 or the commencement of the employee's participation in the unclassified program, whichever is later.

History: *1Sp1985 c 7 s 9; 1992 c 432 art 2 s 1; 1992 c 598 art 1 s 12*